



Town of Moultonborough Zoning Board of Adjustment
Notice of Decision

Request for Variances and Special Exception
Rock Pile Real Estate, LLC/Map 44, Lot 13
May 16, 2012

Applicant: **Rock Pile Real Estate, LLC**
 111 Lee Road
 Moultonborough, NH 03254

Location: **84 Gov. Wentworth Highway, Moultonborough, NH (Tax Map 44, Lot 13)**

On May 2, 2012, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of Rock Pile Real Estate, LLC (hereinafter referred to as the “Applicant” and/or “Owner”) for variances from Article VI F(6)(e) to permit parking within the setbacks, buffers and vegetative screening, Article VI F(6)(g) to permit a fence in lieu of a required vegetative screen, stone wall or landscaped berm along the Lot lines, Article E(1) to grant relief from the 50’ vegetative buffer along all lot lines and a Special Exception from Article VI (E) for a change of use from a previously approved antique shop/ice cream shop to a twelve (12) seat retail bakery with 8 parking spaces. Based on the application, testimony given at the hearings, and additional documentation and plan(s), the Board hereby makes the following findings of fact:

- 1) The property is located at 84 Gov. Wentworth Highway (Tax Map 44, Lot 13).
- 2) The applicants are the owners of record for the lot.
- 3) The applicant was represented at the Public hearing by Attorney Regina Nadeau.
- 4) The lot is located in the Residential/Agricultural Zone.
- 5) 1993-1994 ZBA Special Exception approvals for an antique shop and an “ice cream window” were presented to the Board, as was the Site Plan approval from the Planning Board.
- 6) The Town Planner explained that once a special exception is granted by the ZBA, it is an allowed use and therefore cannot be “abandoned” (since it is not a grandfathered nonconforming use).
- 7) After asking the Town Planner for his opinion on whether the variances were required, the Board decided to proceed with hearing the variances because the change in use appeared to be sufficiently

different and the site plan proposed was different from that of the original site plan approved, and they also decided to move forward with the special exception for a change of use from a specific commercial use to another commercial use.

- 8) Attorney Nadeau read a letter date May 1st, 2102 from Mary-Ann Schmidt Associate Broker/Realtor into the record, which states she was in support of the project and that in her opinion, the use would not have a negative effect on all of the values of the surrounding properties.
- 9) Mr. Stephens noted the board was in receipt of 5 or 6 emails in support of the project and Mr. Woodruff noted he had received one email opposed to the project.
- 10) Abutter Bob Wallace stated that he was not opposed to the green space, and expressed his concerns about traffic safety on both Old Route 109 and NH Rte 109 and the intersection.
- 11) Eric Taussig – provided board with a letter dated May 2, 2012.
- 12) Jim Cahill stated that he was in favor of a bakery, but not at this location.
- 13) Cristina Ashjian provided the Board with a letter dated May 2, 2012 that spoke to truck traffic along NH Rte 109 to the water bottling facility.
- 14) Shannon Fairchild, Michele & Michael Mills, Andy Coppinger spoke in favor.
- 15) Granting the Variances will not be contrary to the public interest as the requested variances would allow a commercial use to continue (after a long hiatus) in a location that has been constructed and used for that purpose and that appears to be needed and wanted by a majority of the public.
- 16) Granting the Variances are consistent with the spirit of the Ordinance as the intent to protect the health, safety, general welfare, provide adequate light and air, to prevent overcrowding, to assure adequate transportation, proper use of natural resources, and other public requirements has been met.
- 17) By granting the Variance, substantial justice is done because the loss of use by the applicant is not outweighed by a gain to the general public.
- 18) Granting the Variance does not diminish the value of surrounding properties as the proposed use is a commercial one similar in nature if not in equal measure to the intensity of use and that the property has been rehabilitated, thereby increasing its valuation.
- 19) Special conditions exist such that a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship as the requirements on this lot of record would render the existing special exception and the requested one untenable because of the size and shape of said corner lot.
- 20) The Zoning Board of Adjustment voted unanimously to continue the Public Hearing to May 16, 2012, and to direct staff to draft a Notice of Decision to Grant the variance for Article VI, F(6)(g), to be reviewed by the Board at the May 16, 2012 Regular Meeting.

- 21) The Zoning Board of Adjustment voted three (3) in favor (Stephens, Bickford, Zewski), two (2) opposed (Nolin, Crowe), to continue the Public Hearing to May 16, 2012, and to direct staff to draft a Notice of Decision to Grant the variance from Article VI, F (6) (e), to be reviewed by the Board at the May 16, 2012 Regular Meeting.
- 22) The Zoning Board of Adjustment voted three (3) in favor (Stephens, Bickford, Zewski), two (2) opposed (Nolin, Crowe), to continue the Public Hearing to May 16, 2012, and to direct staff to draft a Notice of Decision to Grant the variance from Article VI, E(1), to be reviewed by the Board at the May 16, 2012 Regular Meeting.
- 23) Attorney Nadeau presented the Special Exception case, going over each of the required criterion with the exception of number one, which was removed by the variance previously granted.
- 24) Board members discussed each of the criterions.
- 25) The Zoning Board of Adjustment voted three (3) in favor (Stephens, Bickford, Zewski), two (2) opposed (Nolin, Crowe), to continue the Public Hearing to May 16, 2012, and to direct staff to draft a Notice of Decision to Approve the Special Exception, to be reviewed by the Board at the May 16, 2012 Regular Meeting.
- 26) The Zoning Board approved the preparation of one Notice of Decision document that encompasses the three variances and the special exception for the applicant for purposes of clarity and simplicity.

The Public Hearing was continued to May 16, 2012. The Board of Adjustment closed the Public Hearing on May 16, 2012. Based on the above Findings of Fact, the Board of Adjustment voted three (3) in favor (Stephens, Bickford, Zewski), two (2) opposed (Nolin, Crowe), to **GRANT** the request for the three variances and **Approve** the Special Exception.

This decision shall not take effect until thirty (30) days have elapsed and no request for rehearing has been filed in accordance with RSA 677:2, or that if such request has been filed, it has been dismissed or denied, in accordance with RSA 677:3.



Robert H. Stephens
Chairman, Zoning Board of Adjustment

Date 5-18-2012